

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 102, ARTICLE V, OF THE CODE OF THE CITY MIAMI BEACH, FLORIDA, ENTITLED "OCCUPATIONAL LICENSE TAX", TO DEFINE ADJUDICATED VIOLATION, TO DEFINE HABITUAL CONDUCT FOR PURPOSES OF OCCUPATIONAL LICENSE DENIAL AND/OR SUSPENSION OR REVOCATION, AND DEFINING HABITUAL CONDUCT FOR PROMOTERS OCCUPATIONAL LICENSE DENIAL AND/OR SUSPENSION OR REVOCATION, DELETING THE TERM "ACTUAL" IN "ACTUAL THREAT TO PUBLIC HEALTH, WELFARE AND SAFETY", CLARIFYING THE DEFINITION OF "CITY MANAGER OR HIS DESIGNEE", AND PROVIDING FOR AN "INDEPENDENT HEARING OFFICER" TO UNDERTAKE HEARINGS IN THE SUSPENSION OR REVOCATION PROCESS AND PROVIDING FOR FACTORS TO BE CONSIDERED IN DETERMINING THE LENGTH OF A LICENSE SUSPENSION; PROVIDING FOR CODIFICATION REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Mayor and City Commission of the City of Miami Beach are charged with the responsibility of ensuring that businesses in the City of Miami Beach operate within the limitations of the various applicable laws, codes and ordinances; and

WHEREAS, the Mayor and City Commission of the City of Miami Beach desire to establish an equitable and efficient system to review habitual violations of applicable laws, codes and ordinances by businesses in the City of Miami Beach and review business activities that are a threat to the public health, welfare and safety; and

WHEREAS, the Mayor and City Commission of the City of Miami Beach desire to provide more definite definitions for habitual violations and provide for denial and/or suspension or revocation of occupational licenses for businesses which are a threat to the public health, welfare or safety;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Chapter 102, Article V of the Code of the City of Miami Beach, entitled "Occupational License Tax" be amended to read:

ARTICLE V. OCCUPATIONAL LICENSE TAX

Sec. 102-356. Construction of article; definitions.

All of the provisions of this article shall be construed liberally on behalf of the city. Words and terms not defined in this section shall be interpreted in accordance with their normal dictionary meaning and customary usage. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adjudicated violation means a finding, by a city or county special master or code enforcement board, Independent Hearing Officer, or other court of competent jurisdiction, that a violation of a section of federal, state, county or city regulation, law, code or ordinance has occurred as charged by one of the various departments or divisions of the city or county or any other law or code enforcement agency or department. Adjudicated violation shall also include violations of sections of federal, state, county or city regulations, laws, codes or ordinances which carry an immediate penalty and do not require a hearing before the special master, code enforcement board or other court or board of competent jurisdiction and which have not been appealed. For purposes of habitual conduct, the findings of violation of the following sections shall not be included in the definition of adjudicated violation: (1) §70-126, City Code (Graffiti); (2).....

Advertise, advertising, advertisement and publish means all means of conveying to the public, whether by word of mouth, newspaper, magazine, periodical, handbill, written notice, printed display, poster, billboard, radio or television announcement or by any other means, notice of a sale or intention to conduct a sale.

Amusement attraction means any building or structure around, over, or through which persons may move or walk, without the aid of any moving device integral to the building or structure, which building or structure provides amusement, pleasure, thrills or excitement. This term does not include enterprises principally devoted to the exhibition of products of agriculture, industry, education, science, religion or the arts.

Amusement ride means any mechanical device that carries or conveys passengers around, over, or along a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, thrills or excitement.

Antique means an object 50 years of age or older that has a special value due to age or reproduction of the same.

Apartment house means a building with or without resident supervision occupied or intended to be occupied by more than two families living separately with separate cooking facilities in each unit.

Arcade means any place of business that has coin-operated game machines and/or pool tables that, when counted together, exceed five in number.

Auction business means a sole proprietorship, partnership or corporation that maintains a permanent office or branch office in the city and that, in the regular course of business, conducts, arranges, advertises, or promotes auctions or uses or allows the use of its facilities for auctions.

Automobile rental agency means any person who rents, leases or offers to rent or lease five or more motor vehicles within the city within any given year.

Automobile shipper means any person engaged in the business or occupation, as principal, agent, broker, intermediary or otherwise, or holding himself out by advertisement, solicitation or otherwise as being engaged in the business or occupation of receiving and accepting the custody or possession of the automobile of another, under any contract, agreement, understanding or arrangement, which provides for the furnishing, procuring or arranging for the transportation or shipment of such automobile to an agreed point or destination, by driving the same thereto, under its own power or propulsion, in lieu of the transportation or shipment thereof as freight by any auto transportation company or common carrier.

Bed and breakfast inn means an historic structure originally built as a single-family residence, which is owner occupied and operated to provide guest rooms with breakfast and/or dinner included as part of the room rate.

Bottle club means a commercial establishment, operated for a profit, whether or not a profit is actually made, wherein patrons consume alcoholic beverages brought onto the premises and not sold or supplied to the patrons by the establishment, whether the patrons bring in and maintain custody of their own alcoholic beverages or surrender custody to the establishment for dispensing on the premises.

Business means every trade, occupation, profession or other manner of revenue-producing activity regardless of whether a profit is actually made. Business, profession and occupation do not include the customary religious, charitable or educational activities of nonprofit religious, nonprofit charitable and nonprofit educational institutions in this state, which institutions are more particularly defined and limited as follows:

- (1) *Religious institutions* means churches and ecclesiastical or denominational organizations or established physical places for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on, and also means church cemeteries.
- (2) *Educational institutions* means state tax-supported or parochial, church and nonprofit private schools, colleges or universities conducting regular classes and courses of study required for accreditation by or membership in the Southern Association of Colleges and Schools, the Department of Education, or the Florida Council of Independent Schools. Nonprofit libraries, art galleries and museums open to the public are defined as educational institutions and eligible for exemption.

- (3) *Charitable institutions* means only nonprofit corporations operating physical facilities in the state at which are provided charitable services, a reasonable percentage of which are without cost to those unable to pay.

Cardroom means any room, store, office, building, vessel or houseboat used, operated or maintained for the purpose of providing facilities for card playing for four or more persons, other than the owners, operators or lessees thereof, whether or not admission, cover or service charges are exacted.

City manager or his designee means the city manager or one of his assistants or another employee of the city designated by the city manager to perform a function required by this article; however, that review required by section 102-385 shall not be conducted by the same person who performs functions pursuant to any other section of this article. ~~Alternatively, "designee" for purposes of section 102-385 may also mean an independent hearing officer appointed pursuant to resolution of the city commission to perform the review functions set forth in this resolution or to adjudicate violations of the city's codes.~~

Closing-out sale means the sale or offer to sell by any person, to the public, of goods in stock, on order or in transit, with a declared advertised purpose that such sale:

- (1) Is anticipatory to the termination, closing, liquidation, discontinuance, conclusion, or abandonment, of the business, or any part thereof, or any line of goods, or any one store of a group of stores in connection with such sale; and it shall include all sales advertised in such manner as to reasonably convey to the public the impression that upon the disposal of the goods advertised or on hand, the business will permanently cease and be discontinued;
- (2) Is anticipatory to the temporary closing or discontinuance of the business due to alterations or remodeling of the premises or relocation;
- (3) Will consist of goods damaged or altered by fire, smoke, water, hurricane, flood, explosion or other means; or
- (4) Will consist of goods derived from a business that has failed, been closed, discontinued or liquidated, or where such advertising indicates a business failure or emergency affecting the seller or any previous holder of the goods to be sold.

Compensation means any money, reward or consideration, tangible or intangible, personal property or real property, or the use of real or personal property, received directly or indirectly or in trust or by other means.

Driver means an individual operating a motor vehicle whether as the vehicle owner or as agent, employee or lessee of the owner.

Electrologist means any person who removes hair from or destroys hair on the human body by the use of an electric needle.

Electrolysis means the practice of removing surplus hair from any part of the human body by the application of electric current to the hair papilla by means of a needle to cause decomposition of hair papilla.

Employment agent or employment agency means any person in this city engaged for hire or compensation in the business of furnishing persons seeking employment or changing employment with information or other service, intended to enable such persons to procure employment, or furnishing any person who may be seeking to employ, for compensation, help of any kind, with information intended to enable such person to procure such help.

Escort service means any person in this city engaged for hire or compensation in the business of providing companions.

Ferrous metals means any metals containing significant quantities of iron or steel.

Firearm means any revolver, pistol, rifle, shotgun, machine gun, destructive device or other weapon that expels a projectile by the action of an explosive or air pressure or gas.

Florist means any person regularly engaged in the business of selling at retail flowers, funeral sprays, wreaths, designs or corsages.

Flower stand means any person engaged in the business of selling cut flowers exclusive of any, all and every other type and kind of flowers or plants.

For cause means the failure of a licensee to comply with those conditions, standards or requirements required for the issuance of his license, or the violation of any other provision of this article or chapters of this Code incorporated in this article.

Gallery means a business which displays art for viewing and/or for sale regardless of whether a fee is charged for admission.

Guard, watchman, patrol includes any person, who, for consideration, advertises as providing or is engaged in the business of furnishing watchman, guard, patrol, or armored car services or who, for consideration, transports prisoners. This includes any person, who utilizes dogs to perform security services unless otherwise excluded.

Habitual conduct means:

(a) For persons or entities licensed as Promoters, either:

(1) more than one adjudicated violation of the same section of federal, state, county or city regulation, law, code or ordinance in the preceding twelve month period from the date of the last notice of violation issued; or

(2) more than two adjudicated violations of any combination of sections of federal, state, county or city regulation, law, code or ordinance or of the sections of laws or ordinances of any other state or local government in the preceding twelve month period from the date of the last notice of violation issued.

(b) For all other occupations, either:

(1) more than two adjudicated violations of the same section of federal, state, county or city regulation, law, code or ordinance in the preceding twelve month period from the date of the last notice of violation issued; or

(2) more than four adjudicated violations of any combination of sections of federal, state, county or city regulation, laws, codes or ordinances in the preceding twelve month period from the date of the last notice of violation issued.

Hotel means a building occupied or intended to be occupied generally for transient occupancy.

Independent Hearing Officer means a person appointed pursuant to resolution of the city commission to perform the review functions set forth in this resolution or to adjudicate violations of the city's codes.

Janitorial service means any person in this city engaged for hire or compensation to provide cleaning services or persons who will perform these services for others.

License means a permission granted upon compliance with the requirements of this article to engage in a business or activity conducted within the city.

Licensee means any person operating under a license granted pursuant to this article.

Medical clinic means an outpatient facility in which the name of a fictitious entity is prominently featured, which provides for surgical and nonsurgical medical treatment and is not directly associated with a hospital.

Motor scooter means a two-wheeled vehicle with small wheels and a low powered engine.

Motor vehicle or vehicle means any motor-propelled vehicle, with the exception of motor scooters, including but not limited to motorbuses, vans and automobiles operating on the streets of the city for compensation.

News depot means a location where newspaper carriers pick up and prepare newspapers for delivery.

Nonferrous metals means metals not containing significant quantities of iron or steel, including but not limited to copper, brass, aluminum, bronze, lead, nickel, zinc, and alloys thereof.

Not-for-profit organization means an organization registered as a corporation not for profit pursuant to F.S. ch. 617, no part of the income or profit of which is distributable to its members, directors or officers.

Parking lot means any business engaged in whole or in part in the parking of motor vehicles for the payment of a fee.

Pawn means either of the following transactions:

- (1) *Loan of money* means a written or oral bailment of personal property as security for an engagement or debt, redeemable on certain terms and with the implied power of sale on default.
- (2) *Buy-sell agreement* means any agreement whereby a purchaser agrees to hold property for a specified period of time to allow the seller the exclusive right to repurchase the property. A buy-sell agreement is not a loan of money.

Pawnbroker means any person who is not solely a secondary metals recycler subject to F.S. ch. 538, pt. II, which is regularly engaged in the business of making pawns. The term does not include a financial institution as defined in F.S. § 655.005 or any person who regularly loans money or any other thing of value on stocks, bonds or other securities.

Person means any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular.

Prearranged travel or tourist-related services means any service, including but not limited to car rentals, lodging, transfers, and sightseeing tours, for which a traveler receives a premium or for which he contracts or pays prior to departure.

Preowned merchandise means personal property previously owned or used, including secondhand goods.

Private investigative agency includes any person who, for consideration, advertises as providing or is engaged in the business of furnishing private investigations as defined in F.S. § 493.6101(17).

Professional corporation means a corporation organized for the sole and specific purpose of rendering professional service and has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation.

Professional service means any type of personal service to the public that requires as a condition precedent to the rendering of such service the obtaining of a license or other authorization from the state. By way of example and without limiting the generality thereof, the personal services

which come within the provisions of this article are the personal services rendered by certified public accountants, public accountants, chiropractors, dentists, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiroprodists, architects, veterinarians, attorneys at law, and life insurance agents.

Promoter means any person who Promotes a dance or entertainment event on the premises of a business that is licensed to serve alcoholic beverages. To Promote a dance or entertainment event is to be involved in one or more of the following activities: (a) hiring any of the Persons staffing the event (e.g., deejay, host, cashier, doorman, etc.), (b) hiring any of the Persons distributing or mailing invitations, flyers, posters, or other marketing materials in connection with such event, or (c) making the ultimate decision concerning the cost of entrance to the event. A Promoter does not include a) a business, or any full-time employee of the business, that Promotes a dance or entertainment event on premises for which the business holds a valid city occupational license; b) a 501(c) corporation, unless it is permitting the use of its temporary alcoholic beverage license by another business on the premises of such other business; c) a person who holds or Promotes a private reception not open to the general public; (d) a Person who is hired by a Promoter to host, plan or market a dance or entertainment event; or (e) a Person who sponsors, or allows his name to be used in connection with, a dance or entertainment event, provided such Person does not also Promote the event.

Public food service establishment means any building, vehicle, place or structure, or any room or division in a building, vehicle, place or structure, that is maintained and operated as a place where food is regularly prepared, served or sold.

Purchase transaction means a transaction in which a recycler gives consideration having a value in excess of \$10.00 in exchange for regulated metals property.

Receptive tour operator means any person who prearranges tourist-related or tour guide services for individuals or groups visiting the city whose point of origin or departure is a foreign country. This does not include any person who provides services limited solely to any single one of the following: transportation, lodging, food or entertainment.

Recyclers means all persons engaged in the business of gathering or obtaining of ferrous or nonferrous metals, paper, glass or plastic products that have served their original economic purpose, or is in the business of performing the manufacturing process by which these products are converted into raw products consisting of prepared grades and having an existing or potential economic value; by methods including without limitation, processing, sorting, cutting, classifying, clearing, bailing, wrapping, shredding, shearing or changing the physical form or chemical content thereof.

Regulated metals property means any item composed primarily of any nonferrous metals, but shall not include aluminum beverage containers, used beverage containers, or similar beverage containers.

Restaurant means the same as "public food establishment."

Retail establishment means any store, merchant or organization selling merchandise to the general public.

Sale includes all transfers, assignments, pledges, leases, loans, barter or gifts.

Secondhand dealer means any person not solely a secondary metals recycler subject to F.S. ch. 538, pt. II, engaged in the business of purchasing, consigning, pawning, selling, bartering, exchanging in any manner at retail or wholesale, or otherwise dealing for profit in secondhand goods. The term shall include pawnbrokers and all dealers who buy, trade or sell or who make loans of money upon the deposit or pledge of secondhand goods.

Secondhand goods means personal property previously owned or used, which is not regulated metals property regulated under F.S. ch. 538, pt. II, and which is purchased, sold, bartered, exchanged, consigned or pawned as used property. The term includes but is not limited to:

- (1) Watches;
- (2) Items containing gold, silver, platinum or other precious metal;
- (3) Jewelry, diamonds, gems, and other precious stones, excluding costume jewelry;
- (4) Fishing rods and tackle;
- (5) Audio and video equipment, including but not limited to television sets, radios, amplifiers, receivers, turntables, tape recorders, videotape recorders, speakers, and citizens' band radios, and compact disc players;
- (6) Computer equipment;
- (7) Radar detectors;
- (8) Depth finders;
- (9) Trolling motors and outboard motors;
- (10) Photographic equipment, including but not limited to cameras, lenses, electronic flashes, tripods and developing equipment;
- (11) Machinery, tools, electric motors, calculators, tires, hubcaps, musical instruments, typewriters;
- (12) Weapons, including knives, swords, and air guns;
- (13) Telephones, including cellular and portable;
- (14) Microwave ovens;

- (15) Animal fur coats;
- (16) Video games;
- (17) Office equipment such as copiers, fax machines and postage machines;
- (18) Sports equipment;
- (19) Lawnmowers, bicycles and motor vehicles.

Seller of travel, travel bureau means any person maintaining a business location or branch office within the city who offers for sale, directly or indirectly, at wholesale or retail, prearranged travel or tourist-related services for individuals or groups through vacation or tour packages or through lodging or travel certificates in exchange for a fee, commission or other valuable consideration. This includes offering membership in a travel club or travel services for an advance fee or payment, even if no travel contracts or certificates or vacation or tour packages are sold.

Talent agency means any person engaged in the occupation of operating an agency, bureau, office or other place for the purpose of procuring or attempting to procure engagements, or for the purpose of giving information as to where such engagements may be provided, for an artist who seeks employment by a buyer in, but not limited to, the following: a live or motion picture production, whether made on or by film, electronic tape, or other electronic device used to produce theatrical motion pictures, television entertainment motion pictures, industrial motion pictures, or television commercials; modeling services; conventions; print media; the legitimate stage; radio; circus; vaudeville; musical arts; or a musical organization.

Window cleaning service means any person engaged for hire or compensation to provide window cleaning services or persons who will perform these services for others.

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Sec. 102-372. Grounds for denial.

- (a) Any Person whose application for a license has been denied may seek a hearing under section 102-385. An application for a business license under this article may be denied on the following grounds:
 - (1) That the applicant has failed to disclose or has misrepresented information required by this article in the application.
 - (2) That the applicant currently has a license under suspension or revocation. Whenever any business license has been suspended or revoked by the city for any cause whatsoever, no subsequent license shall be issued during the period of suspension/revocation to the licensee or to any other firm in which the licensee or

any of its general partners, limited partners, officers or stockholders owning 20 percent or more of its stock or agents, employees or other persons who were actively involved in the business under suspension/revocation.

- (3) That the applicant desiring to engage in the business as described in the application has selected a proposed site or type of business activity which does not comply with the city's zoning ordinance or other laws of the city.
- (4) That the applicant fails to obtain a bond at the limits required of his business.
- (5) That the applicant fails to obtain insurance at the limits required of his business.
- (6) That the applicant has failed to obtain a certificate of use as required by section 14-66(3) of this Code.
- (7) The certificate of use for the proposed business has been denied, suspended or revoked for any reason.
- (8) The applicant's proposed business activity or portion thereof consists of conduct that is ~~an actual~~ a threat to the public health, welfare or safety.
- (9) Habitual conduct has occurred at the applicant's premises ~~that violates city, county or state laws.~~
- (10) The issuance of a license is based on the applicant's compliance with specific provisions of federal, state, city or county law and the applicant has violated such specific provisions.
- (11) The applicant has violated any provision of this article and has failed or refused to cease or correct the violation after notification thereof.
- (12) The applicant within the preceding five years in this state or any other state in the United States has been adjudicated guilty of or forfeited a bond when charged with soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or illegally dealing in narcotics.
- (13) The premises have been condemned by the local health authority for failure to meet sanitation standards or the premises have been condemned by the local authority because the premises are unsafe or unfit for human occupancy.
- (14) The applicant's premises have been found to constitute a public nuisance by ~~the nuisance abatement board as provided in section 70-206 et seq~~ a court of competent jurisdiction.

- (15) The applicant is delinquent in the payment of any license fee imposed under this article: Code enforcement lien; special assessment lien and/or any other debt or obligation due to the city under state or local law.
- (16) A Business has permitted an unlicensed promoter to hold a dance or entertainment event on the premises of the Business on more than one occasion within a 12-month period.
- (b) In addition to the grounds set forth in section (a), an application for a Promoter license under this article may be denied on the following grounds:
 - (1) A Promoter has held a dance or entertainment event on the premises of an unlicensed Business on more than one occasion within a 12-month period.
 - (2) Habitual conduct has occurred at, or in connection with, a Promoter's dance or entertainment event ~~that violates city, county or state laws (or violates the laws of any other state or local government) including, but not limited to, laws prohibiting~~ a) the serving of alcoholic beverages to minors; b) littering; c) excessive noise; and d) disorderly conduct.

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Sec. 102-373. Investigation to determine compliance with article.

The city manager or his designee may investigate persons engaged in any business encompassed by this article and make such inquiry as shall be necessary to determine whether or not such persons have procured a license as required by this article, or engaged in conduct which violates this article or chapter 18.

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Sec. 102-381. Grounds for suspension, revocation and denial.

- (a) The city manager or his ~~or her~~ designee or the Independent Hearing Officer shall either revoke or temporarily suspend the license of any Person where it is determined by the city manager or his ~~or her~~ designee or the Independent Hearing Officer that:
 - (1) The licensee has misrepresented or failed to disclose material information required by this article to be included in the license application form.
 - (2) The licensee, as part of the licensee's business activity within the city, is engaged in conduct that is ~~an actual~~ a threat to the public health, welfare or safety.

- (3) The licensee is conducting business from premises that do not possess a valid and current certificate of occupancy and/or certificate of use as may be required by city and county laws.
 - (4) Habitual conduct has occurred at the licensee's premises ~~that violates city, county or state law.~~
 - (5) The license issued by the city depended upon the licensee's compliance with specific provisions of federal, state, city or county law and the licensee has violated such specific provisions of law.
 - (6) The licensee has violated any provision of this article and has failed or refused to cease or correct the violation after notification thereof.
 - (7) The licensee, as part of the licensee's business activity within the city, knowingly lets, leases or gives space for unlawful gambling purposes at the licensee's premises.
 - (8) The licensee within the preceding five years in this state, or any other state or in the United States, has been adjudicated guilty of or forfeited a bond when charged with soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or illegally dealing in narcotics.
 - (9) The premises have been condemned by the local health authority for failure to meet sanitation standards or the premises have been condemned by the local authority because the premises are unsafe or unfit for human occupancy.
 - (10) The licensee's premises have been found to constitute a public nuisance by ~~the nuisance abatement board~~ a court of competent jurisdiction.
 - (11) A Business has permitted an unlicensed Promoter to hold a dance or entertainment event on the premises of the business on more than one occasion within a 12-month period.
- (b) The suspension or revocation shall be of the license in effect at the date of such suspension or revocation, even though it may have been issued to a licensee other than the person who held the license at the time the cause for such suspension or revocation arose.
 - (c) No license shall be suspended under this section for a period of more than 12 months. No new license shall be issued during the period of suspension/revocation to the licensee, or to any other firm in which the licensee or any of its general partners, limited partners, officers or stockholders owning 20 percent or more of its stock or agents, employees or other persons who were actively involved in the business under suspension/revocation. At the end of such period of suspension or revocation, the licensee and/or agents, general or limited partners, officers or stockholders may apply for a new license.

- (d) The city manager or his designee or the Independent Hearing Officer shall deny a license to any person as provided by sections 102-371 and 102-372.
- (e) In addition to the grounds set forth in subsection 102-381(a), the city manager or his ~~or her~~ designee or the Independent Hearing Officer shall either revoke or temporarily suspend the license of any Promoter where it is determined by the city manager or his ~~or her~~ designee or the Independent Hearing Officer that:
 - (1) A Promoter has held a dance or entertainment event on the premises of an unlicensed Business on more than one occasion within a 12-month period.
 - (2) Habitual conduct has occurred at, or in connection with, a Promoter's dance or entertainment event ~~that violates city, county or state laws including, but not limited to, laws prohibiting a) the serving of alcoholic beverages to minors, b) littering; c) excessive noise; and d) disorderly conduct~~

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Sec. 102-382. Standards; rule-making authority.

A suspension not exceeding six months shall be imposed in cases where the licensee's violation is shown to be inadvertent and can be promptly corrected by the licensee; a revocation of the license shall be imposed in all other cases. In determining the length of time for a suspension, if any, the city manager or his designee or the Independent Hearing Officer shall consider the following factors: (1) the gravity of the violation; (2) any actions taken by the violator to correct the violation; and, (3) any previous violations committed by the violator. The city manager shall have the authority to adopt written administrative rules to enforce and implement the provisions of this article, ~~which rules shall have the force and effect of city law, provided the rules are approved by the city attorney and ratified by the city commission.~~

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Sec. 102-383. Notice of violation; emergency action.

If the city manager or his designee believes that a licensee has engaged or is engaged in conduct warranting the suspension or revocation of a license, he shall serve the licensee by certified mail or hand delivery, at his business address as disclosed in his application for the license, a written administrative complaint which affords reasonable notice to the licensee of facts or conduct that warrant the intended action. The complaint shall state what is required to be done to eliminate the violation, if any. The licensee shall be given adequate opportunity to request a prior administrative hearing unless the city manager finds that an emergency condition exists involving ~~serious~~ imminent danger to public health, safety or welfare, in which case advance notice and hearing shall not be required. In the case of an emergency suspension or revocation, the licensee shall immediately be advised of the city manager's action and afforded a prompt post-suspension or revocation hearing in accordance with section 102-385.

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Sec. 102-384. Hearing when licensee or permittee fails to comply with notice or when requested by aggrieved applicant/licensee.

If a licensee or permittee fails to comply with any notice issued as provided in section 102-383, the city manager or his designee or the Independent Hearing Officer may issue an order in writing to the licensee, by certified mail or hand delivery, notifying him to appear at an administrative hearing before the ~~city manager or his designee~~ Independent Hearing Officer to be held at a time to be fixed in such order, which date shall be not less than five days after service thereof. Except as provided in subsection (b) of section 102-385, an administrative hearing may also be requested by an applicant/licensee aggrieved by a decision of a code compliance officer regarding denial of a license, determination of fees/penalties due and/or warning of potential suspension/revocation for violation of a provision of this article. The request must be in writing and filed in the city manager's office within ten days of receipt of the decision of the inspector. The request must specify the decision complained of and the nature of the applicant's/licensee's grievance and must be accompanied by a fee as specified in appendix A to defray expenses of the hearing. The fee will be refunded if the applicant/licensee prevails in the appeal.

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Sec. 102-385. Hearing procedures; enforcement of orders.

(a) ~~City manager~~ Independent Hearing Officer review.

- (1) Other than as set forth in subsection (b) of this section, the city manager or his designee or the Independent Hearing Officer shall give written notice of the time and place of the hearing to the licensee/applicant by certified mail or hand delivery and to the city attorney's office.
- (2) Hearings for review of license denial and hearings based on a complaint for suspension or revocation of licenses shall be held by the Independent Hearing Officer. The proceedings shall be informal but shall afford the licensee/applicant the right to testify in his own defense, present witnesses, be represented by legal counsel, submit relevant evidence, cross examine witnesses and object to evidence. The Independent Hearing Officer shall have the power to subpoena licensees, witnesses and other persons to its hearings and to subpoena evidence. Testimony may be taken under oath.
- (3) The proceedings shall be recorded and minutes kept by the city. Any applicant/licensee requiring verbatim minutes for judicial review may arrange for the services of a court reporter at his own expense. The Independent Hearing Officer may conduct a hearing to determine whether the allegations presented in the written administrative complaint have occurred. In the event of previous

findings having been made by a city or county special master or code enforcement board or other court of competent jurisdiction, or the applicant/licensee has failed to timely appeal a notice of violation which carries an immediate fine and finding of guilt, the findings shall be accepted by the city manager's designee, and the parties shall not be permitted to reargue the merits of those findings.

- (4) Within ten days of the close of the hearing, the ~~city manager's or his designee~~ Independent Hearing Officer shall render his decision in writing determining whether or not the license shall be revoked or suspended or denied, or other action taken or continued, as the case may be, and stating his reasons and findings of fact.
- (5) The ~~city manager or his designee~~ Independent Hearing Officer shall file his findings with the city clerk and shall send a true and correct copy of his order by certified mail, return receipt requested, or by hand delivery, to the business address listed on the occupational license or to any such other address as the licensee or applicant shall designate in writing.
- (b) *Board of adjustment review.* Denial of a license for lack of proper zoning shall be appealable to the board of adjustment pursuant to sections 118-136 ~~and 118-351 et seq.~~ All appeals must be submitted to the board of adjustment within 15 days of the date of the denial.
- (c) *Administrative rulings as final.* The ~~city manager's designee's~~ Independent Hearing Officer's/board of adjustment's findings shall constitute the final administrative action of the city for purposes of judicial review under state law.
- (d) *Enforcement.* If an applicant/licensee fails to seek timely appellate review of an order of the city manager or his designee/Independent Hearing Officer/administrative hearing officer/board of adjustment, or to comply timely with such order, the code compliance officer may pursue enforcement procedures as set forth in section 102-377. Business closings required by suspension/revocation orders may be enforced by the police department.

SECTION 2. REPEALER

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY

If any section, subsection or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE

This ordinance shall take effect on the _____ day of _____, 2004.

PASSED AND ADOPTED this _____ day of _____, 2004.

ATTEST:

MAYOR

CITY CLERK

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